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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,741	08/05/2003	Sajeev Madhavan	200209682-I	9672
22879	7590	08/03/2007	EXAMINER	
HEWLETT PACKARD COMPANY			DAILEY, THOMAS J	
P O BOX 272400, 3404 E. HARMONY ROAD			ART UNIT	PAPER NUMBER
INTELLECTUAL PROPERTY ADMINISTRATION			2152	
FORT COLLINS, CO 80527-2400				

  

MAIL DATE	DELIVERY MODE
08/03/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/635,741	MADHAVAN, SAJEEV
	<b>Examiner</b>	<b>Art Unit</b>
	Thomas J. Dailey	2152

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 04 June 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-2, 4-16, 18-25, and 27-30 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____	6) <input type="checkbox"/> Other: _____

### **DETAILED ACTION**

1. Claims 1-30 are pending in this application.
2. Claims 3, 17, and 26 were canceled by the amendment received June 4, 2007.
3. Claims 1-2, 4-16, 18-25, and 27-30 are being considered for evaluation in this office action.

#### ***Response to Arguments***

4. The applicant argues with regard to claim 1, that Kaminsky (US Pub. No. 2004/0078622) fails to teach free computing resources and said free computing resources comprise resources that are not preconfigured for use in said computing system.
5. The examiner disagrees. In the specification the applicant recites, "In overview and with reference to FIGS. 1-5, the present invention in various embodiments pertain to methods of managing computing resources that does not require preconfigured computing resources on standby, but instead uses a pool of free computing resources 304 from which operating computing resources 301 can be configured on-the-fly as needed." (page 6, lines 5-10, i.e. not being preconfigured simply means the resource is being configured on-the-fly, which is to say it is reconfigured when needed). Furthermore, to one of ordinary skill in the art, a pool of free computing resources is akin to a server farm with available computing resources which Kaminsky teaches ([0026], lines 1-6 and [0023], lines

6-10). Kaminsky certainly teaches reconfiguration on-the-fly of the available computing resources ([0033], lines 1-5, an available server is assigned, and by handling the request, its computing resources must be reconfigured, in the sense those computing resources are no longer available and are configured to be in a state of execution). The applicant's main point seems to be that the servers are already configured in Kaminsky, but the examiner reminds the applicant that the claims are dealing with the computing resources, and equivalently with the available computing resources of each server, naturally not configured, as they are not doing anything. These available computing resources simply must be reconfigured in order to execute.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-2, 4-16, 18-25, and 27-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Kaminsky et al (US Pub. No. 2004/0078622 A1), hereafter "Kaminsky."

Art Unit: 2152

8. As to claim 1, Kaminsky discloses a computing resource management method

(Abstract) comprising:

establishing a pool of free computing resources in a computing system ([0026], lines 1-6 and [0023], lines 6-10, the server farm reads on "a pool of free computing resources", and the computing resources of the server farm are free in the sense that the server is available, i.e. it is not currently executing anything);

selecting a free computing resource from said pool of free computing resources to replace an operating computing resource in said computing system ([0033] a new server (free computing resource) is selected from the server farm (pool of resources) to respond to request that was directed to the initially assigned server (operating computing resource)); and

configuring said selected free computing resource to operate in said computing system, after replacing said operating computing resource with said free computing resource in said computing system, wherein said free computing resources comprises resources not preconfigured for use in said computing system ([0033], lines 1-5, an available server is assigned, and by handling the request, its computing resources must be reconfigured, in the sense those computing resources are no longer available and are configured to be in a state of execution and as further evidenced by [0007], lines 5-7, and [0009]).

9. As to claims 15 and 22, they are rejected by the same rationale set forth in claim 1's rejection.

Art Unit: 2152

10. As to claim 2, Kaminsky discloses said selected free computing resource is configured to operate in accordance with a configuration of said operating computing resource being replaced ([0033], when the new server (free computing resource) is assigned it will inherently be configured to operate the same the initially assigned server (operating computing resource) it is replacing was, otherwise it would not be able to respond to the incoming requests and thereby would not be replacing initially assigned server).

11. As to claim 4, Kaminsky discloses said selecting and configuring said free computing resource is initiated automatically upon a failure of said operating computing resource in said computing system ([0018], lines 5-9 and [0029], lines 1-3, the retry request reads on "a failure").

12. As to claim 5, Kaminsky discloses said selecting and configuring said free computing resource is initiated in response to an end-user request for a changed operating computing resource in said computing system ([0018] and Fig. 2, lines 5-9, the client (an end-user) issues a retry request (request for a changed operating resource) to the sprayer which then selects and configures a new server (free computing resource)).

13. As to claim 6, Kaminsky discloses said selecting and configuring of said free computing resource is based on a usage plan for using said free resources in said free pool of computing resources ([0033], lines 5-8).

14. As to claim 7, Kaminsky discloses said usage plan for using said free resources is implementable automatically in response to a failure of an operating computing resources in said computing system ([0029], lines 1-3 and [0033], lines 5-8).

15. As to claim 8, Kaminsky discloses said selecting and configuring said free computing resource to replace said operating computing resource occurs transparently to end-users in said computing system (Fig. 2, the client (end-user) is not directly aware due to the fact it has no way of seeing the internal communication of the server farm).

16. As to claim 9, Kaminsky discloses said computing system comprises a Utility Data Center (Fig. 1, label 160, administration node is functionally equivalent to the claimed Utility Data Center).

17. As to claim 10, Kaminsky discloses said computing system comprises a computer network (Fig. 1, label 130).

18. As to claim 11, Kaminsky discloses monitoring said computing system to detect failed operating computing resources ([0018], lines 5-9 and [0029], lines 1-3).

19. As to claim 12, Kaminsky discloses relegating said failed operating computing resources to a pool of quarantined computing resources ([0035], lines 1-5, by taking remedial measures and treating the failed servers differently this is in effect a quarantine).

20. As to claim 13, Kaminsky discloses rehabilitating said failed operating computing resources for reprovisioning into said computing system ([0035], lines 1-5).

21. As to claim 14, Kaminsky discloses said computing resources comprise routers, servers, data storage systems and CPU's (Fig. 1, labels 130 and 150).

22. As to claims 16 and 25, they are rejected by the same rationale set forth in claim 2's rejection.

23. As to claims 18, 24, and 27, they are rejected by the same rationale set forth in claim 4's rejection.

24. As to claims 19 and 28, they are rejected by the same rationale set forth in claim 5's rejection.

25. As to claims 20 and 29, they are rejected by the same rationale set forth in claim 8's rejection.

26. As to claims 21 and 30, they are rejected by the same rationale set forth in claim 6's rejection.

27. As to claim 23, it is rejected by the same rationale set forth in claim 11's rejection.

### ***Conclusion***

28. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

29. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 2152

30. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Dailey whose telephone number is 571-270-1246. The examiner can normally be reached on Monday thru Friday; 9:00am - 5:00pm.

31. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on 571-272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

32. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TJD  
7/30/2007

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SUPERVISORY PATENT EXAMINER  
7/31/07